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C O N F I D E N T I A L SECTION 01 OF 02 ANKARA 000162

SIPDIS

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TAGS: [PGOV](#) [PHUM](#) [PINR](#) [TU](#)
SUBJECT: CONSTITUTIONAL COURT PRESIDENT ON DTP, MILITARY
TRIALS DECISIONS: THE LAW IS CLEAR BUT MUST BE CHANGED

REF: A. 09 ANKARA 1765
[1](#)B. ANKARA 107

Classified By: Ambassador James Jeffrey, for reasons 1.4 (b,d)

[1](#)1. (C) Summary. In a meeting with Ambassador on January 29, President of Turkey's Constitutional Court, Hasim Kilic, claimed that the controversial decisions to close down the Democratic Society Party (DTP) and to overturn a law allowing military officials to be tried in civilian courts were "very clearly" correct when looked at from a purely legal angle. However, he said that he personally hopes Parliament will change the Constitution to make party closures more difficult and to allow for civilian trials of military figures. End summary.

DTP CLOSURE

[1](#)2. (C) Constitutional Court President Hasim Kilic visited the Ambassador at his residence on January 29, to discuss recent events in the Turkish legal system. Kilic declared his court's unanimous decision to close the Kurdish nationalist Democratic Society Party (DTP) (REF A) "the most justified decision ever taken by the Constitutional Court." He said that, despite his always having been opposed in concept to the closure of political parties, the actions of the DTP left no room for interpretation when held against the standards of closure in the Constitution. The Court can be lenient in its interpretation when a party's violations are restricted only to rhetoric. However, when a party meets face to face with terrorists without denouncing terrorism, as DTP had done, the Court is left "with no other option."

CIVIL COURT CASES FOR MILITARY OFFICIALS

[1](#)3. (C) Kilic was equally direct concerning the Court's unanimous decision to overturn a law that would have allowed military officials to be tried in civilian courts (REF B). He pointed to Article 145 of the Turkish Constitution -- which explicitly says that military courts have jurisdiction over military personnel committing a) military offenses, b) offenses against other military personnel, c) offenses in military-run locations, and d) offenses connected with military service and duties -- as clear grounds to overturn the recent law. He noted that the majority of the members of the Court believe article 145 to be anti-democratic, but as it is not the role of the Constitutional Court to change the Constitution, once again, the Court had no other option.

THE CONSTITUTION ITSELF

14. (C) Kilic freely criticized the Constitution -- on whose basis he makes his decisions -- as antidemocratic, saying that many of its articles are no longer sufficient to address democracy as Turkey has come to experience it. Even though it was accepted in a referendum in 1982, the political environment and the will of the people have changed to the point that the Constitution needs amending. Noting that 83 articles of the Constitution have been changed to date, he argued that a few amendment packages are all that is necessary to update it to today's standards, but that those changes would be difficult to draft properly. Political interests get in the way of overarching change, so difficult projects, such as amending the Constitution, are pushed to the back burner.

COMMENT

15. (C) Contrary to press reports and the comments of some of our contacts in the government, Kilic betrayed no hint that there was pressure on his court to make a decision favorable to the military. His statements, in fact, argue that any other decision by the Court would have been a political one, and that the Court is already interpreting at least the political party closure law as leniently as possible. The Justice and Development (AKP) government, in turn, appears to be left no choice but to try to amend the Constitution to liberalize these points of law. In sum, Kilic is a man of great integrity who does not allow his personal views to

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color decisively his opinions as a judge. Turkey could do worse.
Jeffrey

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